



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **INFORMATION:** Interim Guidelines on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program

Date: August 14, 1998

From: Associate Administrator for Program Development, FHWA
Associate Administrator for Planning, FTA

Reply to
Attn. of: HEP-40/TPL-12

To: Regional Federal Transit Administrators
Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

The CMAQ program was reauthorized in the recently enacted Transportation Equity Act for the 21st Century (TEA-21). The primary purpose of the CMAQ program remains the same: to fund projects and programs in nonattainment and maintenance areas which reduce transportation-related emissions. Some changes to the CMAQ program were included in TEA-21 however, and those changes are the subject of this Interim Guidance. The FHWA and FTA intend to issue final, comprehensive guidance on the new CMAQ program by December 1998 and will initiate a process for receiving stakeholder input on that guidance in the near future.

This Interim Guidance provides: 1) informational items on issues related to the reauthorized CMAQ program, 2) new provisions regarding eligible geographic areas under TEA-21, and 3) guidance related to projects now eligible for CMAQ funds. With the exception of the issues discussed in this Interim Guidance, all provisions of the March 7, 1996, Guidance on the CMAQ program continue to apply. Attachments 1-4 provide updated statutory language relating to the CMAQ program.

1. INFORMATIONAL ITEMS

1. a. Authorization Levels and Apportionment Formula

Table 1 shows the CMAQ authorization levels by fiscal year as included in TEA-21. The CMAQ funds will be apportioned to States each year based upon the adopted apportionment

TABLE 1
TEA-21 CMAQ AUTHORIZATION LEVELS

Fiscal Year Authorization	Amount Authorized
FY 1998	\$1,192,619,000
FY 1999	\$1,345,415,000
FY 2000	\$1,358,138,000
FY 2001	\$1,384,930,000
FY 2002	\$1,407,474,000
FY 2003	\$1,433,996,000

TABLE 2
TEA-21 CMAQ APPORTIONMENT FORMULA

POLLUTANT	CLASSIFICATION AT THE TIME OF ANNUAL APPORTIONMENT	WEIGHTING FACTOR
Ozone (O ₃) or Carbon Monoxide (CO)	Maintenance	.8
Ozone	Submarginal	.8
	Marginal	1.0
	Moderate	1.1
	Serious	1.2
	Severe	1.3
	Extreme	1.4
Carbon Monoxide	Nonattainment (for CO only)	1.0
Ozone and Carbon Monoxide	Ozone nonattainment or maintenance	1.1 x O ₃ factor

1. b. Minimum Guarantee

The TEA-21 provides a minimum guarantee that requires each State to receive funding in an amount not less than 90.5 percent of the estimated annual Federal gasoline tax payments that State pays into the Highway Trust Fund. Due to the minimum guarantee, the annual authorizations listed in Table 1 are the basic authorization levels and could be increased depending on actual Highway Trust Fund receipts.

1. c. Apportionment Formula

The CMAQ funds are apportioned according to a formula based on air quality need which is calculated in the following manner. The population of each area in a State, that at the time of apportionment is a nonattainment or maintenance area for ozone and/or carbon monoxide (CO), is multiplied by the appropriate factor listed in Table 2. Key changes in the apportionment formula under TEA-21 are noted below.

- 3 Areas that are designated and classified as submarginal and maintenance areas for ozone are now explicitly included in the apportionment formula;
- 3 There are new weighting factors for CO nonattainment areas;
- 3 The upper limit on the amount of CMAQ funds that the largest States (California, New York, and Texas) could receive is now lifted, ensuring that CMAQ apportionments more closely reflect needs based upon nonattainment and maintenance area designations and classifications in each State; and
- 3 The freeze related to the apportionment formula due to language in the National Highway System Designation Act of 1995 has been lifted. This freeze had the effect of apportioning CMAQ funds based on nonattainment status as of 1994, regardless of whether redesignation had occurred. This approach has now been replaced by a formula using current designations and classification at the time of apportionment.

1. d. Minimum Apportionments

Each State is guaranteed at least 2 of 1 percent of each year's CMAQ authorized funding regardless of whether the State has any nonattainment or maintenance areas.

systems.

1. d. 2. States with a nonattainment area

Some of the States receiving minimum apportionments have nonattainment or maintenance areas. The population in these areas when weighted by the severity of the pollution is insufficient to bring these States CMAQ funds up to the minimum apportionment levels. Additional flexibility is granted under TEA-21 for these States. Specifically, a State receiving the minimum apportionment may use that portion of the funds not based on its nonattainment and maintenance area population for any project in the State eligible under the Surface Transportation Program (STP). The FHWA will provide a list of these States and a description of the flexibility granted them at a future date.

1. e. Transferability of CMAQ Funds

States may transfer CMAQ funds to other programs according to the following provision. An amount not to exceed 50 percent of the State's annual apportionment may be transferred less the amount the State would have received if the CMAQ program was authorized at \$1,350,000,000. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. This increment of transferable funds will differ from year-to-year and State-to-State depending on overall authorization levels. Each year FHWA and FTA will inform each State how much of their CMAQ funding is transferable, if any.

1. f. Study on the Effectiveness of the CMAQ Program

The TEA-21 directs the Secretary of Transportation and the EPA Administrator to enter into arrangements with the National Academy of Sciences to conduct a study on the effectiveness of the CMAQ program. Among other things, the study will evaluate the emissions reductions attributable to CMAQ funded projects. The results of the study will be provided to Congress not later than January 1, 2001. The study will be funded by deducting \$500,000 per year from the total CMAQ apportionments for FY 1999 and FY 2000. More information about the status of this effort will be provided as the details and scope of this study are fully developed.

2. ELIGIBLE GEOGRAPHIC AREAS

2. a. Maintenance Areas

demonstrate that it had sufficient funding to meet its air quality commitments within a maintenance area. Such flexibility is no longer allowed since maintenance areas are now included in the apportionment formula and the eligibility provisions require that CMAQ funding be used in nonattainment and maintenance areas.

2. b. Particulate Matter (PM-10) Nonattainment and Maintenance Areas

Nonattainment and maintenance areas for PM-10 are also now explicitly eligible to receive CMAQ funding. Under the previous guidance, CMAQ funding had been extended to such areas under administrative discretion provided that two requirements were met. First, EPA had to attest that progress toward attainment of the ozone and/or CO standards would not be delayed by funding PM-10 mitigation projects under the CMAQ program. And second, the State had to notify all nonattainment and maintenance areas that PM-10 projects were to be funded. Now that the law explicitly recognizes these areas as eligible, such requirements are lifted.

States that have PM-10 nonattainment or maintenance areas only (i.e., no ozone or CO nonattainment or maintenance areas) are granted additional flexibility under TEA-21. Since these areas are not included in the CMAQ apportionment calculation, the State may use its minimum apportionment for projects eligible under the STP or the CMAQ program anywhere in the State. However, such States are encouraged to use their CMAQ funds in the PM-10 nonattainment and maintenance areas.

2. c. Classification Criteria

An area that is designated as a nonattainment area for ozone, CO or PM-10 under the Clean Air Act prior to December 31, 1997, is eligible for CMAQ funds provided that the area is also classified in accordance with Sections 181(a), 186(a), or 188(a) or (b) of the Clean Air Act. This means that ozone nonattainment areas must be classified ~~A~~marginal through ~~@~~extreme, and CO and PM-10 nonattainment areas must be classified either ~~A~~moderate or ~~A~~serious to be eligible for CMAQ funding. Submarginal ozone nonattainment areas are now included in the CMAQ apportionment formula, but are not mentioned in the eligibility criteria of TEA-21. To resolve this apparent oversight, we are extending CMAQ eligibility to submarginal ozone nonattainment areas. Areas that were designated with these classifications and subsequently redesignated to maintenance areas are also eligible.

2. d. Revised National Ambient Air Quality Standards (NAAQS)

eligible.

2. e. Revocation of the 1-Hour Ozone Standard

As part of the transition to the 8-hour ozone standard, EPA recently revoked the 1-hour standard in areas that had the requisite 3 years of ~~A~~clean~~@~~ monitoring data. The list of areas for which the 1-hour standard has been revoked is found in the June 5, 1998, Federal Register. Among this group, those areas that had approved maintenance plans by the effective date of the revocation (June 5) will continue to have their maintenance plans in full force. As maintenance areas, they will continue to be eligible for CMAQ funds and will be included in the annual apportionment formula. The conformity requirements will also continue to apply in these areas.

Other areas among the group for which the 1-hour ozone standard has been revoked do not have approved maintenance plans. They may not have submitted a maintenance plan or the plan may not have been approved by June 5. These areas, then, are no longer designated nonattainment or maintenance relative to the 1-hour standard. As such, these areas will not be subject to the conformity requirements and they will no longer be able to meet the basic statutory requirement for CMAQ eligibility unless they are designated nonattainment or maintenance for CO and/or PM. In order to provide continuity in the transportation/air quality planning process, FHWA/FTA are establishing an interim period for these areas providing some continued eligibility under the CMAQ program. Air quality improvement projects in the first 3 years of the Transportation Improvement Program (TIP) will remain eligible for CMAQ funding, subject to the usual State and local direction regarding project selection. The metropolitan planning organizations (MPOs) in these areas will have 4 months from the date of this guidance to amend their TIPs in response to this guidance. After this time frame, CMAQ funding will be restricted to only CMAQ-eligible projects in the first 3 years of the TIP.

At the time of issuance of this interim guidance, EPA's policies regarding the revocation of the PM-10 standard were still under development. Issues affecting the distribution of CMAQ and eligibility under the program for areas affected by the revocation of the PM-10 standard will be addressed in the final program guidance.

3. NEWLY ELIGIBLE PROJECTS

3. a. Extreme Low-Temperature Cold Start Programs

~~Projects intended to reduce emissions from extreme cold start conditions are now eligible for~~

3. b. Magnetic Levitation Transportation Technology Deployment Programs

The CMAQ funds may be used to fund a portion of the full project costs (including planning, engineering, and construction) pursuant to Section 1218-Magnetic Levitation Transportation Technology Deployment Program of TEA-21 and in accordance with the provisions of Section 1218. For these projects, the Federal share may be up to 100 percent of the eligible costs.

3. c. Public Private Partnerships

The TEA-21 provides greater access to CMAQ funds for projects which are cooperatively implemented by the public and private sectors and/or non-profit entities. Public/private initiatives are addressed in the existing CMAQ guidance (see section II.A.13); however, the new statutory language leads to several important changes regarding the eligibility of joint public/private initiatives.

Proposed programs or projects no longer are required to be under the primary control of the cooperating public agency. Also, two of the three criteria which helped to define eligibility for joint public/private ventures in the March 1996 CMAQ guidance will no longer apply since the restrictions are not supported by the new statutory language. These criteria were: that the activity normally be a public sector responsibility, and that private ownership be shown to be cost-effective. The third criterion, noting the public agency's responsibility to oversee and protect the investment of Federal funds in a public/private partnership, continues to apply.

Eligible activities under the public/private partnership provisions include:

- 3 Ownership or operation of land, facilities or other physical assets;
- 3 Cost-sharing of project expenses;
- 3 Carrying out administration, construction management or operational duties associated with a project; and
- 3 Any other form of participation approved by the U.S. DOT Secretary.

While the new statute provides greater latitude in funding projects initiated by private or non-profit entities, it also raises concerns about the use of public funds to benefit a specific

Until more comprehensive guidance is issued, all requests for CMAQ funding involving public/private initiatives must be forwarded by the FHWA/FTA field offices to Headquarters for review and prior concurrence prior to project approval.

Eligible costs under this section may not include costs to fund an obligation imposed on private sector or non-profit entities under the Clean Air Act or any other Federal law. For example, CMAQ funds may not be used to fund mandatory control measures such as Stage II Vapor Recovery requirements placed on fuel sellers.

The TEA-21 contained special provisions for alternative fuel projects that are part of a public/private partnership. For purchase of privately-owned vehicles or fleets using alternative fuels, activities eligible for CMAQ funding is limited to the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle. Further, if other governmental funds are used for vehicle purchase in addition to CMAQ funds, such governmental funds must be applied to the incremental cost before CMAQ funds are applied. For transit vehicles and other publicly-owned vehicles or fleets, the provisions of the March 7, 1996, Guidance continue to apply. Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding. It is recommended however, that consideration of such projects be coordinated with air quality agencies prior to selection for funding under the CMAQ program. This coordination will ensure that such projects are consistent with SIP strategies to attain the NAAQS or in maintenance plans to ensure continued maintenance of the NAAQS.

Decisions over which projects and programs to fund under CMAQ should continue to be made through a cooperative process involving the State departments of transportation, affected MPOs, and State and local air quality agencies. All projects funded with CMAQ funds must be included in conforming transportation plans and TIPs in accordance with the metropolitan planning regulations of October 28, 1993 (23 CFR 450.300) and the transportation conformity requirements (40 CFR parts 51 and 93, August 15, 1997).

4. Other Provisions--Federal Share Increase for Transit Vehicle Control Systems

The TEA-21 amends 23 U.S. C. 120 (c) to allow an increased Federal share for transit vehicle priority control systems. Section 120 of Title 23 (see Attachment 3) is amended to provide that the Federal share of funding for priority control systems for transit vehicles may be up to 100 percent.

Attachment 1
(TEA-21 Changes in Italics)

TITLE 23 UNITED STATES CODE
 HIGHWAYS
 CHAPTER 1 - FEDERAL AID HIGHWAYS

Sec. 149. Congestion mitigation and air quality improvement program

(a) Establishment.-The Secretary shall establish **and implement** a congestion mitigation and air quality improvement program in accordance with this section.

(b) Eligible Projects.-Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State ***that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511 (a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, and -***

(1)(A) if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than **clause** (xvi) of such section), that the project or program is likely to contribute to--

(i) the attainment of a national ambient air quality

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors; **or**

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality **standard; or**

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times. In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, the State may obligate such funds for any project or program

under paragraph (1) or (2) without regard to any limitation of

under section 104(b)(2) for any project eligible under the surface transportation program under section 133.

(2) States with a nonattainment area. If a State has a nonattainment area or maintenance area and received funds under 104(b)(2)(D) above the amount of funds that the State would have received based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2), the State may use that portion of the funds not based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2) for any project in the State eligible under section 133.

(d) Applicability of Planning Requirements.-Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(e) Partnerships with nongovernmental entities.

(1) In general. Notwithstanding any other provision of this title and in accordance with this subsection, a metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project carried out under this section.

(2) Forms of participation by entities. Participation by an entity under paragraph (1) may consist of

- (A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;
- (B) cost sharing of any project expense;
- (C) carrying out of administration, construction management, project management, project operation, or any other management or operational duty associated with the

funding under this subsection--

(A) may include the costs of vehicle refueling infrastructure, including infrastructure that would support the development, production, and use of emerging technologies that reduce emissions of air pollutants from motor vehicles, and other capital investments associated with the project;

(B) shall include only the incremental cost of an alternative fueled vehicle, as compared to a conventionally fueled vehicle, that would otherwise be borne by a private party; and

(C) shall apply other governmental financing purchase contributions in the calculation of the net incremental cost.

(5) Prohibition on Federal participation with respect to required activities. A Federal participation payment under this subsection may not be made to an entity or fund an obligation imposed under the Clean Air Act (42 U.S. C. 7401 et seq.) or any other Federal law.

PL 105-178 (TEA-21) also provides for the following:

Determination by the Secretary. For the purposes of section 149(c) of title 23, United States Code, the Secretary shall determine in accordance with the procedures specified in section 149(b) of such title whether water-phased hydro-carbon fuel emulsion technologies that consist of a hydrocarbon base and water in an amount not less than 20 percent by volume that reduce emissions of hydrocarbon, particulate matter, carbon monoxide, or nitrogen oxide from motor vehicles.

Study of CMAQ Program

(1) In general. The Secretary and the Administrator of the Environmental Protection Agency shall enter into arrangements with the National Academy of Sciences to

(C) determine the amount of funds obligated under the program and make a comprehensive analysis of the types of projects funded under the program;

(D) evaluate the emissions reductions attributable to projects of various types that have been funded under the program;

(E) assess the effectiveness, including the quantitative and non-quantitative benefits, of projects funded under the program and include, in the assessment, an estimate of the cost per ton of pollution reduction;

(F) assess the cost effectiveness of projects funded under the program with respect to congestion mitigation;

(G) compare--

(i) the costs of achieving the air pollutant emissions reductions achieved under the program; to

(ii) the costs that would be incurred if similar reductions are achieved by other measures, including pollution controls on stationary sources;

(H) include recommendations on improvements, including other types of projects, that will increase the overall effectiveness of the program;

(1) include recommendations on expanding the scope of the program to address traffic-related pollutants that, as of the date of the study, are not addressed by the program.

(2) Report.--Not later than January 1, 2000, the National Academy of Sciences shall transmit to the Secretary, the Committee on Transportation and Infrastructure and the Committee on Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report on the results of the study with recommendations for modifications to the congestion mitigation and air quality improvement program in light of the results of the study.

(3) Funding.--Before making the apportionment of funds under section 104(b)(2) of title 23, United States Code, for each of fiscal years 1999 and 2000, the Secretary shall deduct from the amount to be apportioned under such

Attachment 2

Section 104 Apportionment

(2) Congestion mitigation and air quality improvement program.--

- (A) In general.--For the congestion mitigation and air quality improvement program, in the ratio that--
- (i) the total of all weighted nonattainment and maintenance area populations in each State; bears to
 - (ii) the total of all weighted nonattainment and maintenance area populations in all States.
- (B) Calculation of weighted nonattainment and maintenance area population.--Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of--
- (i) 0.8 if--
 - (I) at the time of the apportionment, the area is a maintenance area; or
 - (II) at the time of the apportionment, the area is classified as a submarginal ozone nonattainment area under the Clean Air Act (42 U.S.C. 7401 et seq.);
 - (ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);
 - (iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart.

nonattainment area under such subpart; or
 (vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide.

(C) Additional adjustment for carbon monoxide areas.--

(i) Carbon monoxide nonattainment areas.--If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(ii) Carbon monoxide maintenance areas.--If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was at one time also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide but has been redesignated as a maintenance area, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.1.

(D) Minimum apportionment.--Notwithstanding any other

provision of this paragraph, each State shall receive a minimum of $\frac{1}{2}$ of 1 percent of the funds apportioned under this paragraph.

(E) Determinations of population.--In determining population figures for the purposes of this paragraph, the

Secretary shall use the latest available annual estimates prepared by the Secretary of

Attachment 3

UNITED STATES CODE TITLE 23

Sec. 120. Federal Share Payable

(c) INCREASED FEDERAL SHARE FOR CERTAIN SAFETY PROJECTS. The Federal share payable on account of any project for traffic control signalization, pavement marking, commuter carpooling and vanpooling, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatment, breakaway utility poles, or priority control systems for emergency vehicles *or transit vehicles* at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal -aid systems for any fiscal year in accordance with Section 104 of this title shall be used under this section.

Attachment 4

SEC. 1310. UNIFORM TRANSFERABILITY OF FEDERAL-AID HIGHWAY FUNDS

(a) In General.--Chapter 1 of title 23, United States Code, is amended by inserting after section 109 the following:

Sec. 110. Uniform transferability of Federal-aid highway funds

(c) Application to Certain CMAQ Funds.--The maximum amount that a State may transfer under this section of the State's apportionment under section 104(b)(2) for a fiscal year may not exceed 50 percent of (1) the amount of such apportionment, less (2) the amount that the State's apportionment under section 104(b)(2) for such fiscal year would have been had the program been funded at \$1,350,000,000. Any such funds apportioned under section 104(b)(2) and transferred under this section may only be obligated in geographic areas eligible for the obligation of funds apportioned under section 104(b)(2).''